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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 722

MANUEL GOMEZ BARRIOS, JOSE GARCIA RODRIGUEZ, JOSE MANUEL VENTURA VENTURA, EVALDO ESCANDEL SOTO, APPELLANTS

v.

STATE OF FLORIDA

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted in response to the Court's order of January 17, 1966, inviting the Solicitor General to express the views of the United States. The issue raised by appellants that involves the special interests of the United States is the question whether their prosecutions under Florida law interfered with the powers of the federal government; we address ourselves to that aspect of the case.

On February 2, 1964, the United States Coast Guard observed that appellants, Cuban nationals and masters of fishing vessels owned by the Cuban government, were fishing in the territorial waters of the

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United States, less than two miles from the coast of East Key, an island constituting part of Florida. Appellants were apprehended by Coast Guard personnel, who, after consultation with the Department of State, turned them over to the appropriate law enforcement officials of the State of Florida at the latters' request.[1] The action of the Coast Guard and the State Department was taken because, at that time, federal law did not provide penalties for appellants' conduct, whereas appellants were subject to punishment under Florida law.[2]

The relevant Florida statutes are Fla. Stat. Ann. § 370.06, dealing with licenses for taking natural resources from the State's tide or salt waters, and the Florida Territorial Waters Act, Fla. Stat. Ann. (Supp. 1964) § 370.21, limiting the types of persons who may obtain licenses. The former statute requires that owners or masters of commercial fishing vessels pay license fees and obtain licenses before taking salt water products from the tide or salt waters of Florida (§ 1); that aliens and nonresidents must pay an additional "license tax" on vessels used for commercial purposes (§ 2); that aliens and nonresidents must pay an "annual license tax" for taking salt water fish from Florida waters for commercial purposes (§ 4); and that violations of the statute are

[1] See 50 Dept. State Bull. 276–278 (1964), where the Secretary of State described the United States government's role in the matter.

[2] *Id.* at 277.

punishable by fine or imprisonment or both (§ 9).

The Florida Territorial Waters Act provides in Section 3 that:

> No license shall be issued by the board of conservation under § 370.06, to any vessel owned in whole or in part by any alien power, which subscribes to the doctrine of international communism, or any subject or national thereof, who subscribes to the doctrine of international communism, or any individual who subscribes to the doctrine of international communism, or who shall have signed a treaty of trade, friendship and alliance or a nonaggression pact with any communist power. * * *

The same Act further provides that other alien vessels shall be granted or refused licenses on the basis of reciprocity, retorsion and suggestions by the Secretary of State of the United States (§ 3); that it is unlawful for any unlicensed alien vessel to take any natural resource from the State's territorial waters (§ 4); that violations of the Act shall be punished in the same manner as other violations of chapter 370 (§ 8); and that crew members or masters seeking political asylum shall not be fined or imprisoned under the Act (§ 9).

Appellants were convicted of taking and possessing natural resources from Florida's territorial waters without a license, a misdemeanor, and each was fined $500, which he paid. On appeal, the Supreme Court of Florida affirmed (J.S. App. A).

Appellants first contend (J.S. 5–7) that their convictions under State law are unconstitutional on the ground that the regulation of fishing by aliens in ter-

ritorial waters is exclusively a matter for the federal government. Alternatively, they contend (J.S. 7–10) that, even if the States may legislate in this area in the absence of federal regulation, the federal government has occupied the field by various treaties, statutes and administrative regulations.[3] If the latter contention is correct, of course, there would be no need for this Court to reach the broader constitutional problem raised by appellants' first argument.

As raised in the present case, however, the question of federal occupation of the field has been rendered academic by the Bartlett Act, Act of May 20, 1964, 78 Stat. 194, 16 U.S.C. 1081–1085, passed subsequent to appellants' convictions. The Bartlett Act makes it unlawful for any foreign vessel to fish within the territorial waters of the United States without obtaining authorization from the federal government. In addition to establishing the standards to be applied in granting or withholding such authorization, the Act provides criminal penalties for violations and contains detailed provisions for enforcement.

Whether or not this statute wholly excludes State laws concerning fishing by foreign vessels, at the present time and for the foreseeable future, the question whether the federal government has occupied this field, to the exclusion of the States, will require consideration of the 1964 Act. Furthermore, the very existence of a federal sanction for unauthorized fish-

[3] Appellants' prosecutions were not in violation of any treaty, statute or regulation. The authorities cited in the Jurisdictional Statement are presumably intended to show the activities of the federal government in connection with fisheries and foreign vessels in general.

ing by foreign vessels in American waters renders future State prosecutions highly unlikely. A decision on the preemption issue in the present case, therefore, would be without prospective significance. Indeed, since appellants have already paid their fines [4] and, we are informed, have left the country, the case appears to lack immediate significance as well. We therefore suggest that the principal issue presented in this case lacks the substantiality requisite for consideration by this Court.[5]

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

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[4] This fact may well render the case moot (see *St. Pierre* v. *United States*, 319 U.S. 41) since none of the "collateral consequences" of conviction which this Court has previously found sufficient to keep cases alive (see *Pollard* v. *United States*, 352 U.S. 354, 358; *Fiswick* v. *United States*, 329 U.S. 211, 220–223) are present here.

As we understand Florida law, appellants are not entitled to recover the fines they have paid, except through executive clemency. See *City of Miami* v. *Keton*, 115 So. 2d 547, 551 (Fla. Sup. Ct.); *Grant* v. *Dubbs*, 108 Fla. 116. They could have stayed the execution of their sentences, and thus refrained from paying the fines imposed, merely by filing a notice of appeal and executing a supersedeas bond. Fla. Stat. Ann. § 924.14.

[5] In these circumstances, no extended discussion of the merits of appellants' contentions is in order. We note, however, that the State Department has advised us that the actions of the State of Florida in this case did not interfere with the conduct of our foreign relations. See 50 State Dept. Bull. 276–278 (1964).

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